IN THE HIGH COURT OF JUSTICIARY.

APRIL 2. 1785.

INFORMATION

FOR

ALEXANDER PENROSE CUMMING of *Altyre*, Esq; with concourse of his Majesty's Advocate, Prosecutor;

AGAINST

JOHN LAWSON, designing himself of *Westertown*, now residing at *Old Milns* near *Elgin*, in the County of *Elgin* and *Forres*, Pannel.

THE said Alexander Penrose Cumming was a candidate for representing the county of Murray, at the last election, which took place on the 15th April 1784.

Some years before this, James, Earl Fife, who possesses a considerable property within the county, had created thereon a number of nominal and fictitious qualifications, which he had distributed among such of his friends and dependents as were willing to take them; so that the most servile dependents have not only become freeholders, but also, the more effectually to support the system, have been created Justices of the Peace and Commissioners of Supply for the county. And as the persons coming under this description, constituted a majority upon the roll of freeholders, if their votes were to be allowed, the gentlemen of real property in the county, saw that their rights, as electors, would be totally annihilated; and they determined to use every legal method for rendering these nominal votes ineffectual.

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In particular, it was made known, that the oath preſcribed by the ſtatute of the 7th Geo. II. would be tendered to every perſon claiming to vote; and that thoſe who did ſwear the oath, when their qualifications were really nominal and fictitious, created for no other purpoſe than to enable them to vote at elections, would moſt certainly be proſecuted before the High Court of Juſticiary as guilty of perjury. But notwithſtanding this intimation, the ſaid John Lawſon, and ſundry other perſons, whoſe qualifications were clearly nominal and fictitious, created for the purpoſe of enabling them to vote, within the true meaning and intendment of the ſtatute, took and ſubſcribed the oath, and, by ſo doing, ſubjected themſelves to the pains of perjury.

Criminal letters were thereupon executed againſt the ſaid John Lawſon, and two other perſons, ſeverally, charging them with having been guilty of wilful perjury; and concluding, in common form, for the pains of law.

The firſt of theſe proſecutions which came to a hearing, was the one brought againſt the Rev. Mr. William Leſlie, miniſter of the pariſh of St. Andrews and Longbride; who ſtated an objection to the ſaid Alexander Penroſe Cumming's title to proſecute at his own inſtance, with only the concourſe of his Majeſty's Advocate. But your Lordſhips, after mature deliberation, delivered an opinion, that the proſecutor's title was ſufficient, although the criminal letters were diſmiſſed upon certain informalities.

The criminal letters againſt the ſaid John Lawſon came before the Court on the 18th January laſt; when, after ſtating the objection to the proſecutor's title, which had been overruled in the caſe of Mr. Leſlie, he pleaded *not guilty*; and counſel having been heard upon the relevancy of the libel, your Lordſhips ordered informations to be lodged. In obedience to which appointment, this information is offered in behalf of the proſecutor.

After reciting the clauſe in the ſtatute of the 7th Geo. II. and the tenor of the oath thereby appointed to be taken by freeholders claiming right to vote at any election of a member to ſerve in Parliament, the libel ſets forth: " Yet true it is, that the ſaid " John Lawſon has preſumed to commit the ſaid crime of per- " jury; in ſo far as, the ſaid Alexander Penroſe Cumming, a " freeholder ſtanding upon the roll of freeholders for the county " of Elgin and Forres, upon the 15th day of April, in the year " 1784, and now ſtanding as a freeholder on ſaid roll, offered " himſelf

" himſelf a candidate to repreſent the ſaid county in Parliament,
" at the election which took place for the ſaid county, on the ſaid
" 15th April, at which election, the ſaid John Lawſon, who had
" obtained himſelf inrolled in the roll of freeholders of the ſaid
" county of Elgin and Forres, upon pretended rights to all and
" whole the four eighth parts of the town and lands of Coltfield,
" with houſes, parts, pendicles, multures, privileges, and perti-
" nents of the ſame, uſed and wont, lying within the barony and
" lordſhip of Kinloſs, pariſh of Alves, and ſhire of Elgin and
" Forres; and likewiſe all and whole that one half of that one
" eighth part of the town and lands of Caultfield *alias* Coltfield,
" lying contiguous to the half of the eighth part of the ſaid
" lands, ſome time pertaining heritably to Alexander Watſon,
" ſenior, in Caultfield, together with the half part of the ſame
" lands, called Outings, or Outriggs, and Headriggs, with their
" whole houſes and pertinents, all lying within the ſaid pariſh of
" Alves, and ſhire of Elgin and Forres, did, on the ſaid 15th
" day of April, within the court-houſe of the burgh of Elgin,
" in the county of Elgin and Forres, claim right to vote at the
" ſaid election of a member to ſerve in Parliament for the ſaid
" county, in virtue of the lands above mentioned, for which he
" ſtood inrolled. And James Brodie of Brodie, Eſq; a freeholder
" ſtanding on the ſaid roll, having, in terms of the foreſaid act
" of the 7th of the late King, required the ſaid John Lawſon to take
" and ſubſcribe the oath above recited, he the ſaid John Lawſon
" did, then and there, accordingly ſwear and ſubſcribe the ſame,
" although he well knew that he had no right or title to the
" foreſaid parts of the lands of Coltfield and others, and that
" the ſame did not belong to him, nor were his own proper e-
" ſtate, and that his pretended right thereto was nominal and
" fictitious, created for the purpoſe of enabling him to vote for
" a member of Parliament; and although he alſo well knew, that
" the ſaid lands were, neither *de jure*, nor *de facto*, in his poſſeſſion;
" but, on the contrary, that the ſaid lands and others, or at leaſt
" parts thereof, did in property belong to Colin Moriſon, now,
" or lately reſiding at Rome, or had by him been ſold to Peter
" Roſe-Watſon of Coltfield, at or before the time of the election
" aforeſaid, who, one or other of them, ſtood then infeft in
" the ſaid lands, or parts thereof, or in the actual poſſeſſion
" thereof, by drawing the rents, mails, and duties; and that

" the

" the ſaid lands did belong in ſuperiority to James, Earl Fife, of " the kingdom of Ireland, who was infeft and in the actual poſ- " ſeſſion thereof, by uplifting the duties and caſualties from the " ſaid Colin Moriſon, or Peter Roſe-Watſon the vaſſal, granting " diſpoſitions, charters, or other rights to the ſaid vaſſals, and " acting in all other reſpects as ſole ſuperior of the ſaid lands, " without regard to the pretended right in the perſon of the ſaid " John Lawſon; and the ſaid John Lawſon having wilfully and " falſely ſworn and ſubſcribed the ſaid oath in manner above " mentioned, in conſequence whereof, his vote was admitted " and allowed, and his name was not eraſed out of ſaid roll, " he did give his vote and ſuffrage for the ſaid James, Earl Fife, " who was on that occaſion elected and returned member of " Parliament for the ſaid county, in oppoſition to the ſaid Alex- " ander Penroſe Cumming, againſt which election and return, the " ſaid Alexander Penroſe Cumming has preſented a petition to " the Houſe of Commons."

That this libel is properly laid, and that the charge, if proved, is relevant to infer the pains of law, ſeems, at firſt view, not to admit of a doubt, being conceived in the preciſe terms of the ſtatute. It is charged, that the pannel falſely and wilfully ſwore the oath preſcribed by the act of the 7th George II., " al- " though he well knew that he had no right or title to the lands " of Coltfield and others, and that the ſame did not belong to him, " nor were his own proper eſtate, and that his pretended right " thereto was nominal and fictitious, created for the purpoſe of " enabling him to vote for a member of Parliament; and al- " though he alſo well knew that the ſaid lands were, neither *de* " *jure*, nor *de facto*, in his poſſeſſion."

Whether the proſecutor will be able to make good this charge, in whole or in part, by ſufficient evidence, is a matter of which the Jury alone can judge; but, in the preſent ſtage of the proſecution, it muſt be taken for granted that he is in condition to adduce ſuch evidence. And, ſuppoſing the charge to be proved in the preciſe terms of the libel, to the conviction of the Jury, the ſole judges of evidence in criminal caſes, it neceſſarily and unavoidably follows, that the pannel muſt be found guilty of perjury.

But, although the nature of the caſe hardly admitted of a debate upon the *relevancy*, properly ſo called, that is, upon the queſtion, Whether the libel ſhould at once be diſmiſſed as irrelevant,

vant, or be remitted to the cognizance of a jury; yet, as the matter upon which the jury will ultimately have to return a verdict, neceſſarily involves in it conſiderations, not only of *fact*, but of *law*, with reſpect to the conſtruction and import of the ſtatute of the 7th George II., the counſel upon both ſides thought it their duty to ſtate what occurred to them upon this ſubject, for the information both of the Court and of the Jury, in their reſpective provinces.

The defences for the pannel, were chiefly pointed at that part of the libel which charges him with perjury, in having ſworn that his title to the lands of Coltfield *was not nominal or fictitious, created or reſerved in him in order to enable him to vote for a member to ſerve in Parliament*, although he well knew that the contrary was the caſe.—It was argued, that his title to the lands of Coltfield could not be accounted nominal and fictitious, created or reſerved in him, in order to enable him to vote for a member to ſerve in Parliament, becauſe he really had in his perſon all the right which his title-deeds apparently conveyed, without being ſubject to any back-bond or obligation of *truſt:* That this conſtruction of the ſtatute had been ſettled by repeated judgments of the Court of Seſſion, and of the Houſe of Lords; and that many perſons, of moſt unexceptionable character, had accordingly taken and ſubſcribed the oath under circumſtances preciſely ſimilar to thoſe of the pannel.

In order to form a judgment how far this defence is well founded, it becomes neceſſary to enquire what was the real purpoſe and meaning of the oath impoſed by the ſtatute of the 7th George II., and what ſpecies of freehold qualification was thereby intended to be reprobated under the deſcription of a title to lands *nominal or fictitious, created or reſerved in the claimant, in order to enable him to vote for a member to ſerve in Parliament* in contradiſtinction to a *true and real eſtate;* an enquiry, which the proſecutor is happy to enter upon, in order that the queſtion may be fully and deliberately conſidered, now that it comes before your Lordſhips in a ſhape wherein the competency of trying the general point is perfectly indiſputable; and he is not without hopes, that, even as the law ſtands at preſent, a juſt and ſound conſtruction of the ſtatute of the 7th George II. will yet be found ſufficient to check an abuſe which has of late been moſt ſeverely felt and complained

of, and which has well nigh annihilated the freedom of election in many counties of Scotland.

In general, it muſt be admitted, that, in Scotland, as well as in England, the plan of the Legiſlature was, to annex the right of voting at county elections to a ſubſtantial eſtate, or intereſt in land, of ſuch an yearly value as was held to be ſufficient for placing the voter in ſome ſort of an independent condition. In Scotland, the amount of the qualification has been long fixed at 40 ſhillings of old extent, or 400l. Scots of valued rent; and, although this qualification has been ſometimes complained of, as too high, it may perhaps be found, upon the whole, not to have been injudiciouſly choſen.

But, in the ſyſtem of the election law, at leaſt as explained by the act 1681, cap. 21., which continued to be the governing rule, till after the Union, there was one capital imperfection, which contained in it the ſeeds of all the miſchief that has ſince appeared. The right of election is thereby declared to be veſted in "thoſe who, at that time, ſhall be publicly infeft in property "*or ſuperiority*, and in poſſeſſion of a 40 ſhilling land of old ex-"tent, holding of the King or Prince," &c.

The word *ſuperiority* is an expreſſion of the moſt indefinite nature that can be imagined, and is applicable to rights which differ widely from one another.—A right of ſuperiority may be, and often is, a ſubſtantial eſtate, or intereſt in lands, perhaps of more value than the property itſelf; or, by a little ſkill in conveyancing, a nominal ſuperiority of lands may be created, which is worth nothing at all, or poſſibly leſs than nothing. But, as the act 1681 had made no diſtinction, it is probable, that, upon the conſtruction of that act alone, every ſuperiority, whether ſubſtantial or merely nominal, and for whatever purpoſe created, would have been found to give a right of voting, providing the lands upon which it was created, were of the old extent, or valuation requiſite.—So long, however, as Scotland remained a ſeparate kingdom, and whilſt a ſeat in Parliament was ſo little an object of conſequence, that the people at large were obliged to bribe the attendance of their repreſentatives, by defraying their charges, the evil does not appear to have been much felt or attended to.

But ſo ſoon as Parliamentary intereſt came to be an object of conſequence to the great families in Scotland, (which was one of the immediate effects of an union with a powerful and more opulent

opulent nation), the evils reſulting from the above imperfection in our election laws, began to make their appearance, and to encroach upon the privileges of the real freeholders.—One of the firſt devices which occurred for extending the influence of a great man, by the means of fictitious votes, was, the granting conveyances to his friends and dependents of ſuch portions of land as were neceſſary for the purpoſe, either in *truſt*, or redeemable upon payment of eluſory ſums, which, of conſequence, reduced the eſtate or intereſt of the voters to a mere ſhadow.—Of this laſt, an example is to be found in the journals of the Houſe of Commons, ſo far back as the year 1710, with reſpect to a controverted election for the county of Dumfries.—" 11 *Martis*, 13 *die Fe-* " *bruarii* 1710.—The queſtion being put, that Homer Maxwell, " J. G. R. G. L. G. G. of G. and J. B. who were infeft of " eſtate *redeemable upon paying a roſe noble*, had a right to vote " in the election of a commiſſioner for the ſhire of Dumfries,— " it paſſed in the *negative*."

Soon after, the Legiſlature interpoſed, in order to correct abuſes of this nature in time coming, by the ſtatute of the 12th of Queen Anne, cap. 6th, which recites, in the preamble, That " whereas, of late, ſeveral conveyances of eſtates have been made, " in truſt, or *redeemable for eluſory ſums nowiſe adequate to the true* " *value of the lands*, on purpoſe to create and multiply votes in " elections of members to ſerve in Parliament, for that part of " Great Britain called Scotland, contrary to the true intent and " meaning of the laws in that behalf"—

It is therefore enacted, " That no perſon ſhould be entitled to " vote, whoſe infeftment was not recorded, a year before the *teſte* " of the writs for calling a new Parliament, or, in caſe of an e- " lection happening during the continuance of a Parliament, one " year before the date of the warrant for making out a new writ " for ſuch election; and that it ſhall and may be lawful to or " for any of the electors preſent, ſuſpecting any perſon or per- " ſons to have his or their eſtates in truſt, and for behoof of an- " other, to require the preſes of the meeting to tender the fol- " lowing oath to any elector; and the ſaid preſes is hereby em- " powered and required to adminiſter the ſame, in the words " following, viz. I A. B. do, in the preſence of GOD, declare " and ſwear, That the lands and eſtate of " for which I claim to give my vote in this election, are not con-

" veyed

" veyed to me in truſt, or for the behoof of any other perſon " whatſoever; and I do ſwear before GOD, That neither I, nor " any perſon to my knowledge, in my name, or by my allow- " ance, hath given, or intends to give, any promiſe, obligation, " bond, back-bond, or other ſecurity, for rediſponing or recon- " veying the ſaid lands and eſtate, any manner of way whatſo- " ever. And this is the truth, as I ſhall anſwer to GOD.

" And in caſe ſuch elector refuſe to ſwear, and alſo to ſub- " ſcribe the ſaid oath, ſuch perſon or perſons ſhall not be capable " of voting, or being elected at ſuch election."

So far as reſpected the abuſe of creating fictitious votes, by the conveyance of real eſtates under a latent *truſt*, the remedy provided by this act, appears to have been complete, and adequate to the miſchief. But a truſt-conveyance was only one of many devices, by which the appearance of a freehold qualification could be veſted in a perſon, without giving him any real eſtate, ſuch as the Legiſlature could poſſibly mean to endow with the important privilege of electing a repreſentative to Parliament.—By a little ſkill in conveyancing, freehold qualifications might be created, ſo perfectly nominal and fictitious, that a truſt became unneceſſary; becauſe, in truth, they conveyed nothing at all, being the mere *form*, or ſhadow of a right, without any ſubſtance whatever.

The ordinary ſyſtem of conveyancing afforded no leſs than two ways by which this could be done; either by creating fictitious *wadſets* of ſuperiority, *redeemable for payment of trifling ſums*, and where, in fact, there was no real loan of money, or by making the right of ſuperiority, which was to be manufactured into votes, ſo perfectly unſubſtantial, (for example, the tenth part of a penny Scots, of a pair of ſpurs, &c. with a perpetual diſcharge of the caſualties), that, after parcelling out this ſhadow of a right amongſt his friends and dependents, the granter ſhould continue, to all intents and purpoſes, to have the ſame command of the eſtate upon which they were to vote, as if no deed of any kind had been executed.

Accordingly, a more ample remedy, and one which, if rightly underſtood, the proſecutor apprehends to have been fully adequate to the miſchief, was introduced by the ſtatute of the 7th Geo. II. cap. 16. which enacts, " That every freeholder who ſhall " claim to vote at any election of a member to ſerve in Parlia- " ment, for any lands or eſtate in any county or ſtewartry in " *Scotland*, or who ſhall have right to vote, in adjuſting the rolls

" of

" of freeholders, inſtead of the oath appointed to be taken by an " act made in the 12th year of her late Majeſty Queen Anne, in- " tituled, *An act for the better regulating elections of members to " ſerve in Parliament for that part of Great Britain called Scotland*, " ſhall, upon the requeſt of any freeholder formerly inrolled, be- " fore he proceed to vote in the choice of a member, or on ad- " juſting the rolls, take and ſubſcribe, upon a roll of parchment, " to be provided and kept by the Sheriff, or Stewart's clerk, for " that purpoſe, the oath following, which the preſes or clerk to " the meeting, either for the inrolment or election, is hereby im- " powered and required to adminiſter; that is to ſay,

" I A. B. do, in the preſence of GOD, declare and ſwear, That " the lands and eſtate of for which I claim a right to " vote, in the election of a member to ſerve in Parliament for " this county or ſtewartry, is actually in my poſſeſſion, and do " really and truly belong to me, and is my own proper eſtate, " and is not conveyed to me in truſt, or for, or in behalf of, any " other perſon whatſoever; and that neither I, nor any perſon " to my knowledge, in my name, or on my account, or by my " allowance, hath given, or intends to give, any promiſe, obli- " gation, bond, back-bond, or other ſecurity whatſoever, other " than appears from the tenor and contents of the title upon " which I now claim a right to vote, directly or indirectly, for " rediſponing and reconveying the ſaid lands and eſtate, in any " manner of way whatſoever, or for making the rents or profits " thereof forthcoming to the uſe or benefit of the perſon from " whom I have acquired the ſaid eſtate, or any other perſon what- " ſoever; and that my title to the ſaid lands and eſtate is not no- " minal or fictitious, created or reſerved in me, in order to en- " able me to vote for a member to ſerve in Parliament, but that " the ſame is a true and real eſtate in me, for my own uſe and " behoof, and for the uſe of no other perſon whatſoever. And " that is the truth, as I ſhall anſwer to GOD.

" And that, in caſe he ſhall refuſe, if required, to take and " ſubſcribe the oath aforeſaid, his vote ſhall not be admitted or " allowed, and his name ſhall forthwith be eraſed out of the roll " of freeholders; and in caſe any perſon ſhall preſume, wilfully " or falſely, to ſwear and ſubſcribe the ſaid oath, and ſhall be " thereof lawfully convicted, he ſhall incur the pains and puniſh-

" ment of *perjury*, and be profecuted for the fame, according to " the laws and forms in uſe in *Scotland*."

No direct alteration is here made upon the requiſites of the qualification neceſſary for entitling a claimant *to be admitted to the roll of freeholders*. Theſe appear to have been left upon the footing of the ſtatutes already ſubſiſting; and it probably occurred to the Legiſlature, that hardly any regulations could be made, concerning the requiſites of *inrolment*, ſo extenſive as to meet all the devices which the ingenuity of politicians might contrive for creating fictitious votes, without any real property, in oppoſition to the whole ſpirit and intendment of the election laws. A more effectual check, it was thought, might be provided, by making a ſolemn appeal to the conſcience of every freeholder inrolled, when he came forward to give his *vote;* and by obliging him to ſwear an oath, which, it was imagined, would ſearch to the bottom the nature of his eſtate, and render it impoſſible for him to exerciſe the privileges of a freeholder upon a nominal or fictitious qualification, created merely for the purpoſe of enabling him to vote, without incurring the guilt, and ſubjecting himſelf to the puniſhment of *perjury*.

In conſidering the purpoſe and meaning of the above oath, three obſervations occur, which ſeem hardly to be diſputable.—The *firſt* is, That when the Legiſlature appointed every perſon claiming to vote at the election of a member to ſerve in Parliament, to make oath, if required, that his title to the lands and eſtate, in reſpect of which he claims to vote, " is not nominal " or fictitious, created or reſerved in him, in order to enable " him to vote for a member to ſerve in Parliament," they meant to correct or prevent an abuſe of one kind or another, to put a negative upon ſome ſpecies of freehold qualifications, which was either then uſed, or might afterwards be created, in Scotland, but which the Legiſlature diſapproved of, as improper and unconſtitutional. This cannot be controverted, unleſs it ſhall be ſuppoſed, that Parliament impoſed an oath upon freeholders, one conſiderable part of which was intended for no purpoſe, and had no meaning at all.

2*do*, That the ſpecies of qualification which the Legiſlature meant to check, was one which had *apparently* all the requiſites which the ſtatutes then in force had made neceſſary; that the perſon claiming to vote thereon muſt have been publicly infeft in the

the property or ſuperiority of lands amounting to 40 s. of old extent, or 400 l. Scots of valuation, otherwiſe he could not be admitted to the roll of freeholders, or be in a ſituation to have the oath tendered to him. The law as it ſtood before the act of the 7th George II., was abundantly ſufficient for excluding any perſon from the privilege of voting at elections, or even from being inrolled as a freeholder, unleſs his qualification came up to the legal ſtandard, ſo far as reſpected the *external forms*, the *inſeſtment*, the *holding*, the *extent* or *valuation*, which were all clearly defined by ſtatute.

3*tio*, It is clear, that qualifications held in *truſt* were not the object in view, becauſe theſe were ſufficiently guarded againſt by the act of the 12th of Queen Anne, and by the former part of the very oath now under conſideration. The form of the oath contains, in the firſt place, an abjuration of all truſts direct or indirect, conceived in the moſt ample and comprehenſive terms that could be deviſed, ſo as to leave no room for ſubterfuge or evaſion; and then follows the clauſe reſpecting nominal and fictitious titles, which is ſuperadded to the oath of the 12th of Queen Anne, and which muſt mean ſomething different from the merely holding of a qualification in truſt, if it is allowed to have any meaning at all.

If theſe premiſes are allowed to be juſt, (and the petitioner does not ſee upon what footing any of them can be controverted), it neceſſarily follows, that the qualifications which the Legiſlature meant to exclude from voting, under the deſcription of titles nominal or fictitious, created or reſerved in the claimant in order to enable him to vote, could be no other than thoſe nominal and fictitious eſtates above deſcribed, conſiſting either of *wadſets* of ſuperiority, redeemable for trifling ſums, or of ſuperiorities which, by the craft of conveyancing, were reduced to a mere *form* or *name*, without any ſubſtance whatever.

The deſcription contained in the oath, and which every perſon claiming to vote muſt ſwear that his qualification is *not*, agrees, in every particular, with the freehold qualifications laſt mentioned. So far as relates to the form of the title-deeds, they have no doubt the *ſemblance* of real eſtates, otherwiſe the holders would not even be admitted to the roll of freeholders, in which ſituation the act of the 7th George II. ſuppoſes them to ſtand when it impoſes the oath; but they are ſuch eſtates as never were known

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in the ordinary courſe of buſineſs, and which never were created for any purpoſe, except that of entitling perſons to vote at an election, who had no ſubſtantial intereſt in the county. They are eſtates which, for the moſt part, yield nothing at all, and which perſons muſt be ſolicited to take, even although the great man who has recourſe to this expedient for encreaſing his influence at elections, is at the whole expence of making up the titles. Several hundreds of theſe nominal and fictitious eſtates have been created in different counties of Scotland; for all which, if fairly brought into the market, and expoſed to ſale, excluſive of the privilege of *voting*, which the Legiſlature never meant ſhould be a *property* of itſelf, but an appendage *annexed* to real property exiſting in the voter, no man would offer any price, or even take a preſent of them, as they are not intrinſically worth even the paper and parchment upon which the titles are wrote.

Were the queſtion now to be propoſed for the firſt time, to any man of plain unſophiſticated underſtanding; were he deſired to conſider the words of the oath, and to ſay, whether a perſon holding a freehold qualification, under the circumſtances above deſcribed, could, with a ſafe conſcience, ſwear, " That my title " to the ſaid lands and eſtate is not nominal and fictitious, " created or reſerved in me, in order to enable me to vote for a " member to ſerve in Parliament, but that the ſame is a real and " true eſtate in me, for my own uſe and benefit," *&c.* he would probably think the queſtion a very ſtrange one;—it would appear to be aſking, in other words, whether a perſon was entitled to ſwear that an eſtate held by him was *not* the very thing which he knew it to be in every reſpect.

One thing, at leaſt, ſeems to be clear, that thoſe who deny that freehold qualifications, ſuch as the proſecutor has pointed out, come properly under the deſcription of nominal and fictitious, *&c.* in terms of the ſtatute, ought, in fair reaſoning, to point out ſome other *ſpecies* of qualification, to which the ſtatutory deſcription is more applicable, and which it may be ſuppoſed that the Legiſlature had in view. Accordingly, in the debate upon the relevancy, the counſel for the pannel were called upon to ſay, Whether, excluſive of *truſts*, which are plainly out of the queſtion, there ever was known in Scotland, any ſpecies of nominal and fictitious qualification, created or reſerved for the purpoſe of entitling to vote at elections, other than thoſe wadſets of

ſuperiority,

ſuperiority, and unſubſtantial rights of ſuperiority above deſcribed? For that theſe muſt neceſſarily have been the fictitious qualifications intended to be checked, unleſs ſomething elſe could be pointed out, which the deſcription in the oath ſuited more exactly. But it will be remembered by your Lordſhips, that the queſtion did not receive an anſwer at the time, and the proſecutor muſt ſtill hold it to be unanſwerable.

The interpretation which the counſel for the pannel endeavoured to fix upon the words of the oath, was, that no qualification can be held nominal or fictitious, created or reſerved, *&c.* when the voter has truly in him all the right which his titles apparently convey, without being under any obligation to account to, or rediſpone to a third party,—which, your Lordſhips will obſerve, is in other words ſaying, that, in the language of the ſtatute, a title nominal or fictitious, *&c.* is ſynonymous with a qualification held in *truſt*.

That this could not be the meaning of the Legiſlature, ſeems to be perfectly clear, 1*mo*, From the words of the oath, which, in plain language, import ſomething different from, and more comprehenſive than a mere truſt. A qualification manufactured out of a ſuperiority, may both be nominal and fictitious, and created or reſerved, in order to entitle the holder to vote at elections, without being a truſt; or, by a little ingenuity, rights of ſuperiority may be made ſo completely unſubſtantial, as to render a truſt unneceſſary;—and, 2*do*, From an obſervation formerly ſtated, that latent truſts were ſufficiently guarded againſt by the act of the 12th of Queen Anne, and likewiſe by the firſt part of the oath in the ſtatute of the 7th of George II., by which the taker of the oath is made to abjure every ſort of truſt, direct or indirect, in the moſt clear and comprehenſive terms that could be deviſed. The concluding part of the oath, therefore, which is ſuperadded to the oath of the 12th of Queen Anne, as a farther check to unconſtitutional votes, muſt neceſſarily be pointed at ſomething different from a mere truſt; unleſs it ſhall be ſuppoſed, that, when the Legiſlature made this addition to the oath, all that they meant, was, to oblige every perſon claiming to vote at elections, to ſwear the ſame thing twice in different words; firſt, to abjure truſts of every kind, in the moſt plain and unequivocal language; and then to do the ſame thing over again, in expreſſions which naturally convey a different meaning,

and which, according to this view of the matter, one would imagine to have been inſerted for no other purpoſe than to ſtartle perſons of ſcrupulous conſciences, and to teach others the dangerous leſſon of parrying oaths, and of inventing meanings different from what the words naturally import.

In framing this oath, which was to be addreſſed to the conſcience of every individual claiming to vote, the Legiſlature has not wrapped up its meaning in the technical language of law, which profeſſional men alone might be ſuppoſed ſufficiently to underſtand. *Nominal and fictitious*, are expreſſions which do not occur in the ſyſtems of the law of Scotland, nor in the ſtatute law, except upon this occaſion. Their meaning, therefore, like that of other expreſſions, muſt be determined according to their uſe in common language. Indeed, it would be difficult to find any expreſſions in the Engliſh language, which correſpond more exactly to the qualifications which the proſecutor has above deſcribed, than the words in which the oath is conceived, according to their common and received acceptation. And, what may be held as a deciſive proof of this, it muſt be known to your Lordſhips, and to every man in Scotland, that ſuch qualifications are to this hour commonly known by the name of *nominal and fictitious votes*, and that they are ſeldom ſpoke of in any other language, unleſs when the holders of ſuch votes get the appellation of *parchment Barons*, or ſome other name equally contemptuous, in order to diſtinguiſh them from the *real freeholders* of a county. In ſhort, whatever ſophiſtry may be uſed to explain away the meaning of the oath, and whatever theſe men of paper and parchment may ſay or ſwear upon the ſubject, the unbiaſſed voice of the public will ſtill hold them to be *nominal and fictitious voters*; becauſe, in plain language, and plain ſenſe, they really are ſo.

It may be true, that inſtances are not wanting, of men of unqueſtionable good character having taken the oath under circumſtances which come within the ſcope of the proſecutor's argument; and of this the pannel will no doubt attempt to avail himſelf when he comes before the Jury, although it is believed no inſtance will be found, of any perſon having been ſo hardy as to ſwear the oath, whoſe ſituation was perfectly ſimilar to that of the pannel. It is, however, worthy of notice, that although ſome have been hardy enough to digeſt this oath, yet, on its being

being at laſt election propoſed to Keith Urquhart of Meldrum, Eſq; brother-in-law to Earl Fife, he left the court-room; and although the majority, compoſed as it was, thought proper notwithſtanding to ſuſtain his vote in the election, yet, on a complaint to the Court of Seſſion, his name was ordered to be expunged from the roll, and full expences given againſt him. At an election for another county it is a well known fact, that although the oath was taken by ſeveral clergymen, it was rejected by as many officers of his Majeſty's forces. But, at any rate, the ſentiments of a few individuals, ſuppoſing them to have been leſs biaſſed by party and by politics, could be of no avail in determining upon the import and conſtruction of an act of Parliament.

What the counſel for the pannel ſeemed chiefly to rely upon, was the authority of certain judgments of the Houſe of Lords, by which it is ſaid to have been determined, that qualifications preciſely ſimilar to the pannel's, were legal votes, and that the perſons who held them were in ſafety to take the oath in the ſtatute of the 7th George II., according to the ſound meaning and conſtruction thereof.

But the proſecutor muſt take the liberty to diſpute, that the queſtion as to the ſound conſtruction of the oath, either was, or could be competently decided in the Court of Seſſion, or by the Houſe of Lords, upon appeal from that Court. The juriſdiction of the Court of Seſſion, in matters of election, being entirely founded upon particular ſtatutes, is thereby confined to queſtions of being admitted to, or expunged from the roll of freeholders; which queſtions the Court is empowered to try and decide upon in a ſummary complaint exhibited for that purpoſe, and their determinations are, in the ordinary courſe of law, reviewable in the Houſe of Lords.

But the act of the 7th Geo. II., although it appoints every freeholder to ſwear, if required, that his title to the lands in reſpect of which he claims to vote, is not nominal or fictitious, created or reſerved, &c.; yet has it made no proviſion, that this circumſtance might be ſtated as an objection to the being *inrolled* upon a qualification which had the external forms required by law, and ſhould of courſe be cognizable by the Court of Seſſion, upon a ſummary complaint.—The act rather takes it for granted, that perſons under that deſcription might demand to be inrolled as freeholders,

freeholders, in which ſituation the ſtatute takes them up, and enacts, that, when they come forward to *vote*, an oath ſhould be adminiſtered, ſuch as it was imagined that no nominal and fictitious freeholder would preſume to take, that, being thus compelled to betray themſelves, they ſhould not only be debarred from voting at the time, but their names erazed from the roll of freeholders. And if this be a juſt interpretation of the ſtatute, it is perfectly clear, that neither the Court of Seſſion, nor the Houſe of Lords, judging upon appeal from that Court, could have occaſion to try or determine what was the import of the oath in queſtion, or under what circumſtances a perſon ſtanding upon the roll of freeholders was entitled to take it, without ſwearing falſely.

For ſome time after the ſtatute was paſſed, it is probable that the terrors of the oath operated in the way which the Legiſlature had expected. By degrees, however, the impreſſion wore off; and attempts were again made to create freehold qualifications, which ſhould convey the right of voting at elections, and nothing ſubſtantial but the right of voting. Some of theſe were brought under the cognizance of the Court of Seſſion by ſummary complaint, in the ſhape of an objection to the *inrolment*; and different judgments were pronounced.—In the caſe of Burnet of Craigie, decided in 1746, the objection was ſuſtained; and it was repelled in the caſe of Grant of Drumphad, and ſome others. —It does not appear, that, in theſe caſes, any queſtion was ſtated about the competency of trying the matter in the ſhape of an objection to the inrolment; nor was this a plea which could ever be expected to come from the only perſon who had a right to plead it, viz. the claimant, whoſe title was objected to as nominal and fictitious; becauſe, the doing ſo, would have argued a conſciouſneſs of ſome defect in his title, or, at leaſt, a doubt, whether, upon being enquired into before a court of law, it might not be found to come under the deſcription of nominal and fictitious.

It was not till ſome time before the general election in 1768, that the full extent of the abuſe came to be ſeen and felt. In place of thoſe feeble experiments which had been tried by the political operators of former days, the manufacture of nominal and fictitious votes was now conducted upon a large and extenſive ſcale, in Forfar, Cromarty, and other counties; inſomuch, that,

that, in many places, the real freeholders found themſelves likely to be juſtled out of their moſt important privileges, by a ſet of gentlemen, whoſe names and perſons were equally unknown to them, and whoſe eſtates exiſted no where except upon parchment, although, for the ſake of form, their titles contained the names of lands within the county, which belonged in property to ſome peer, or other great landholder.

Many of theſe caſes were brought before the Court of Seſſion, by ſummary complaints, upon the ſtatute of the 16th George II. And the Judges of that Court, being juſtly alarmed at the extent of the evil, and deſirous to carry into execution the purpoſes of the ſtatute of the 7th George II., which they had no doubt meant, in one ſhape or other, to put a negative upon votes of this kind, they were led to exerciſe a power, which perhaps did not belong to them, and which was diſapproved of in the Houſe of Lords. The perſons whoſe votes were objected to as nominal and fictitious, were, upon the application of the other party, ordained to anſwer, upon oath, certain queries with reſpect to the particular circumſtances of their reſpective qualifications, tending to ſhow that they were nominal or fictitious, created or reſerved, for the purpoſe of enabling to vote at elections; and, where the anſwers made by the party ſeemed to inſtruct that his qualification was of that nature, the Court pronounced a judgment, refuſing to admit, or expunging him from the roll.—And ſimilar judgments were pronounced, with reſpect to other parties who had refuſed to anſwer the interrogatories, and were, of conſequence, *held as confeſſed.*

David Wallace, one of the perſons who had been held as confeſſed, and had, upon that footing, been expunged from the roll of freeholders for the county of Forfar, entered an appeal to the Houſe of Lords; and the reaſons upon which he pleaded for a reverſal of the judgment, as ſtated in the printed appeal caſe, were, *verbatim*, as follows: " *Firſt*, The eſtate, upon which the " appellant claimed to be, and was inrolled, is a legal qualifica- " tion; and the titles, upon the face of them, veſt the freehold " in him abſolutely, without truſt or condition. The reſpond- " ent's objection is, That theſe titles are merely nominal, the e- " ſtate not being really in the appellant, but only a truſt, for the " ſingle purpoſe of his voting at the election of a member for " the county. But the titles themſelves refute the objection;

" and the Legiſlature has, by the above act, 7th George II., pre-
" ſcribed the mode of diſcovery of latent and colluſive truſts, by
" requiring the ſuppoſed truſtee to take an oath, aſcertaining the
" nature of his eſtate, and intereſt in the lands upon which he
" has been inrolled, at the peril of his being ſtruck off the roll,
" and *under the pains of perjury in caſe of falſe ſwearing. This*
" *mode, therefore, muſt be adhered to; and no juriſdiction, inferior to*
" *the Legiſlature, can add, diminiſh, or vary a tittle therefrom.*—A
" freeholder, therefore, once inrolled, and having taken the a-
" bove oath, cannot be ſtruck off the roll, upon pretence of his
" right's being merely nominal, but a truſt, *until after legal con-*
" *viction of his having ſworn falſely.*

" *Second*, The Court of Seſſion has aſſumed a legiſlative power,
" *by introducing an additional teſt to that ordained by the act of Par-*
" *liament.* The act ſays, That the party taking the oath pre-
" ſcribed, at the requeſt of any freeholder, ſhall be inrolled as
" abſolute owner of the eſtate, in right of which he claims in-
" rolment. The interlocutors ſay, That after this is done, he ſhall
" undergo a ſecond examination, upon oath, to the very matter
" which was the object of the firſt. The act ſays, That upon
" refuſal to take the oath preſcribed, the party's vote ſhall not be
" admitted, and his name ſhall be eraſed from the roll of free-
" holders. The interlocutors ſay, That upon refuſing this ſe-
" cond teſt, his name ſhall be expunged from the roll of free-
" holders. And, *thirdly*, but which is worſt of all, the act ſays,
" That the perſon ſwearing falſely, ſhall incur the pains and pu-
" niſhment of perjury, and be proſecuted for the ſame, accord-
" ing to the laws and forms in uſe in Scotland; *which muſt there-*
" *fore be upon a legal trial, and by the verdict of a Jury.* But the
" interlocutors go a ſhorter way to work. They ordain the par-
" ty to be examined upon the interrogatories, in order to con-
" vict himſelf; and, upon his refuſal, declare the eſtate, which
" he had before ſworn his own, to be not his own, and his title
" thereto nominal and fictitious.—Thus, inſtead of a legal trial,
" upon proper evidence adduced againſt him, he muſt either ac-
" cuſe himſelf, or, if he refuſes it, ſtands conſequentially con-
" victed of perjury.—No law of either part of the United King-
" dom warrants ſuch a proceeding."

The judgment of the Houſe of Lords was in theſe terms:

Dec. 2. 1768 " Ordered and adjudged, That the interlocutors complained of

" in

" in the appeal be reverſed, and that the appellant be replaced " upon the roll of freeholders for the county of Forfar, from " which he had been ſtruck off."

In 1770, ſimilar appeals were entered to the Houſe of Lords, in name of Mr. John Johnſton and two other gentlemen, who had been expunged by the Court of Seſſion from the roll of freeholders in the county of Cromarty, under circumſtances preciſely the ſame with thoſe of Mr. Wallace's caſe, except that Mr. Wallace, as a freeholder, had already taken and ſubſcribed the oath required by the ſtatute of the 7th George II., which they had not. In the appeal caſe for Mr. Johnſton, it was ſtated, " That the " ſtatute of the 7th of the late King, having preſcribed an oath to " be put to a freeholder, reſpecting the reality of his eſtate and " intereſt in the freehold, before he could be allowed to vote, the " demand now made by the reſpondent, of examining the ap- " pellant on oath, *was incompetent and inadmiſſible.* That when the " appellant came to *vote*, the reſpondent, or any other freeholder, " might put the truſt-oath to him ; and if he refuſed to take it, his " name would forthwith be ſtruck out of the roll of freeholders, " ſo that nobody could ſuffer by the delay. That the ſtatute " juſtly thought it ſufficient, to give an opportunity to all parties " intereſted, of putting the appellant to this teſt, when he ſhould " come to exerciſe his right of voting, and wiſely preſcribed a " *ſpecific teſt*, in order to take away, as far as poſſible, from Judg- " es, the power of arbitrary deciſion, in caſes of election."—And the *reaſons of appeal* were *verbatim* copied from the caſe for Mr. Wallace, only leaving out ſome expreſſions which were adapted to the peculiarity in Mr. Wallace's ſituation, of his having already taken and ſubſcribed the oath at a meeting of freeholders.

The judgment was in theſe terms : " Ordered and adjudged, That Die Veneris, " the interlocutors complained of in theſe three cauſes be reverſed, 9. Martii 1770. " and that the reſpondent's petition be diſmiſſed. And it is far- " ther ordered, that the names of the appellants be inſerted in " the roll of freeholders for the county of Cromarty."

The reverſal of the decrees of the Court of Seſſion in the above caſes, and the ordering the ſeveral appellants to be replaced upon the roll, did not neceſſarily infer any determination, with reſpect to the ſound conſtruction of the oath in the 7th George II. ; and ſo far as the grounds of the judgments may be fairly gathered from the arguments of the counſel contained in the printed caſes,

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the interlocutors of the Court of Seſſion were reverſed, not becauſe they judged erroneouſly as to the import of " nominal or " fictitious, created or reſerved," &c., which the Houſe of Lords had no occaſion to decide upon, but becauſe their proceedings were *ultra vires*, and becauſe they had no power to impoſe any *teſt* or oath upon perſons claiming right to vote at elections, other than that which the ſtatute had preſcribed.

Whatever pains, therefore, may have been taken to repreſent theſe judgments of the Houſe of Lords, as giving a ſanction to every thing which had the external *form* of a qualification, provided it was not held in *truſt*, and conſequently, as eſtabliſhing the impoſſibility of a title being " nominal or fictitious, created " or reſerved," &c. in terms of the ſtatute, unleſs where the holder had come under an obligation of truſt, the proſecutor muſt take upon him the liberty to ſay, that the general queſtion, with reſpect to the import of theſe ſtatutory expreſſions, remains to this hour undecided, or even uninfluenced by the weight of any judicial authority, excepting the opinions given by the Court of Seſſion in the caſes above-mentioned, which opinions may not have been the leſs ſolid and ſubſtantially well founded upon the merits, becauſe they were delivered in the exerciſe of a power or juriſdiction, which, it was afterwards found, in the laſt reſort, did not belong to that Court.

The queſtion is now, for the firſt time, brought before a Court, with regard to whoſe juriſdiction there can be no doubt, and which is fully authoriſed by law, and bound to give judgment upon it.

It was indeed pleaded as a defence on the part of the pannel, that the proſecution could not proceed before your Lordſhips, till the queſtion, as to the legality of his qualification, was tried and determined in the civil court, which is, in other words, ſaying, that the queſtion ſhall not be decided in a competent court, till it is tried in another court which is not competent to the deciſion of it, and that, of conſequence, there can be no proſecution at all.

For your Lordſhips will obſerve, that the pannel, having been inrolled as a freeholder, having continued *four months* upon the roll without complaint, and taken all the oaths which the law preſcribes, the Court of Seſſion has no power to take cognizance of his qualification, unleſs there ſhould be an alteration of circumſtances,

cumſtances, far leſs to determine whether he has ſworn the oath falſely or not; and even before the lapſe of the four months, it has been ſhown, that the Court of Seſſion have no authority, under the ſtatute of the 7th Geo. II., to take up the ſubject-matter of the oath in the ſhape of an objection to an inrolment, which is the only thing cognizable in that Court, and to determine, beforehand, whether a claimant is, or is not, under ſuch circumſtances, that he may properly take the oath, and, according to ſuch determination, to inrol, or appoint him to be expunged from the roll.—Whether the Court of Seſſion have a power to proceed in this manner, and whether they could do ſo conſiſtently with the above judgments of the Houſe of Lords, is at leaſt a very doubtful point.

Whereas, with reſpect to the competency of the Court of Juſticiary, there is not the ſhadow of a doubt. The proſecutor's title to proſecute has already been ſuſtained, and, at his inſtance, the pannel ſtands charged with having committed *perjury*, by wilfully and *falſely* ſwearing the oath preſcribed by the ſtatute of the 7th Geo. II.; in trying the truth or falſehood of which charge, the queſtion unavoidably occurs, What is the real meaning of that oath; and whether was the pannel under circumſtances which entitled him to take it, without ſwearing falſely?—Your Lordſhips, therefore, are bound in duty to proceed to the trial of the pannel's guilt or innocence, and of every queſtion which is neceſſarily involved therein; and not only is the Court of Juſticiary competent for the determination of the general queſtion, but perhaps it may be found, upon examination, that there was no other court of law, nor any ſpecies of action, other than that which the proſecutor is now inſiſting in, by which he could have obtained a judicial diſcuſſion and determination, with regard to a point which he conſiders to be highly important and intereſting to this country.

Another defence much inſiſted upon, was, that, as the oath reſolved into a mere *matter of opinion*, there could be no proſecution for perjury, becauſe it was impoſſible to prove, that, when the pannel took the oath, he did not *think* or *believe* what was therein contained.

If this defence be well founded, it muſt be acknowledged that the Legiſlature has fallen into a very great blunder, in ſubjoining to the form of the oath, an enactment, that "in caſe any perſon

" ſhall preſume, wilfully and falſely, to ſwear and ſubſcribe the " ſaid oath, and ſhall be thereof lawfully convicted, he ſhall in- " cur the pains and puniſhment of perjury, and be proſecuted " for the ſame, according to the laws and forms in uſe in Scot- " land."—An enactment which neceſſarily ſuppoſes, that a conviction of perjury, in wilfully and falſely ſwearing the oath, was at leaſt a thing poſſible.

It is no doubt a ſuppoſeable caſe, that the pannel, or any perſon in ſimilar circumſtances, may have ſworn the oath *falſely*, and yet not done it *wilfully*, of which the Jury muſt judge when the whole circumſtances ſhall be laid in evidence before them. But this is not peculiar to proſecutions for the crime of perjury, nor to the preſent proſecution, as nearly the ſame thing muſt occur in the trial of every other crime.—It is not the external act that conſtitutes the eſſence of a crime, but the criminal *intention* or purpoſe of the perſon who commits it.—A man may *kill*, without being guilty of *murder*.—He may *take the goods of another*, and yet not commit a *theft*; and, in the ſame manner, he may ſwear what is *not true*, without incurring the guilt of *perjury*.—Before the Jury can return a verdict, finding a pannel guilty of any crime, they muſt be ſatisfied of the criminal intention or purpoſe of his mind; which purpoſe, being inviſible to any human eye, they muſt neceſſarily judge of, according to probabilities, and according to the circumſtances of evidence which are laid before them.

In the preſent caſe, if the pannel ſhall be able to ſatisfy the very reſpectable Jury by whom he is to be tried, that, at the time he took the oath, he honeſtly and fairly believed, (however erroneouſly), that his title to the lands upon which he claimed to vote was not nominal or fictitious, created or reſerved in him, in order to enable him to vote for a member to ſerve in Parliament, but that the ſame was a real and true eſtate in his perſon, he can be under no apprehenſion of their returning a verdict, finding him guilty of wilful perjury; although, when the evidence comes to be adduced, the proſecutor believes, that the circumſtances attending the pannel's qualification, will appear to be ſuch as hardly to admit the ſuppoſition of an innocent miſtake operating upon his mind when he took the oath. It will be found, that the right in his perſon was a nominal and fictitious wadſet of ſuperiority, created ſolely for the purpoſe of enabling him to vote at the election

tion without any real loan of money, and redeemable for a trifling ſum, the caſualties of ſuperiority being diſcharged during the not-redemption; that he never *poſſeſſed* in any ſhape whatſoever; and that his right was held to be ſo completely inſignificant, that, ſubſequent to the date thereof, the lands, upon part of which it was created, were ſold at a judicial ſale before the Court of Seſſion, both property and ſuperiority; and that they have ever ſince continued in the ſole poſſeſſion of the purchaſer, and thoſe deriving right from him.

Of one thing, at leaſt, the proſecutor is fully perſuaded, that if the opinion of the Court and of the Jury, with reſpect to the true intent and meaning of the oath, ſhall coincide with what he has ſuggeſted, even although they ſhould be ſatisfied that the pannel had ſomehow or other miſtaken the nature of his right, and had *bona fide* believed at the time what he ſwore, they will not allow it to be ſuppoſed or underſtood in the country that he has been acquitted of the guilt of wilful perjury, becauſe the oath emitted by him was *agreeable to truth*, and to the ſound conſtruction of the ſtatute 7th George II.; but that care will be taken, either in the verdict of the Jury, or in ſome other part of the proceedings, to expreſs what their underſtanding of the matter is, and upon what ground the pannel has been acquitted, (if the Jury ſhall not find him guilty); ſo that all perſons in the ſame ſituation may henceforth be put upon their guard, and ſhall not have a pretence for pleading, in time coming, that, if they have ſworn the oath *falſely*, they did it *ignorantly*. And, if ſuch ſhould be the reſult of the trial, the proſecutor's chief object will be attained, and he ſhall not think that he has proſecuted in vain.

It was obſerved by one of the counſel for the pannel, as a peculiarity attending the preſent proſecution, (and the truth of the obſervation ſhall not be diſputed), that the bringing the pannel to puniſhment was not the proſecutor's object, or at leaſt was only a ſecondary object. However much the proſecutor might find himſelf injured by the pannel and others under ſimilar circumſtances, who, without having any real intereſt in the county of Murray, have been made the engine for wreſting the important privilege of electing a repreſentative to Parliament, from the real freeholders of the county, or of beſtowing it upon *one* freeholder to the excluſion of all the reſt, he has been careful not to give way to a vindictive ſpirit, or to be miſled by the feelings

ings of private reſentment. It was not for the purpoſe of puniſhing or bringing diſtreſs upon thoſe who had injured him, that he was led to ſtand forth in the diſagreeable office of a proſecutor; but chiefly, in order to correct an abuſe which threatens ruin to the freedom of elections in Scotland; fully perſuaded as he is, after the moſt deliberate conſideration he could beſtow upon the ſubject, that ſuch nominal and fictitious qualifications as that which ſtands in the perſon of the pannel, were meant to be diſallowed by the ſtatute of the 7th Geo. II.; and that the remedies provided by that ſtatute, if vigorouſly carried into execution, and if the real landholders in Scotland will take the trouble of aſſerting their rights againſt that hoſt of phantoms which has been conjured up by the craft of politicians, are fully ſufficient for preventing the evil in time coming.—If in this opinion the proſecutor ſhall be found to have erred, he will only have to lament, with many others who wiſh well to their country, the miſerable imperfection of the election laws in Scotland.

In reſpect whereof, &c.

ROBERT BLAIR.